



APPLICATION OF STATE SET-ASIDE PROGRAM TO MUNICIPALITIES

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DEFINITIONS OF CERTIFIED SMALL CONTRACTOR AND MINORITY BUSINESS ENTERPRISE

By law, a "certified small contractor" is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. Minority business enterprises are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities ([CGS § 4a-60q\(a\)](#)).

ISSUE

Summarize the provisions in [PA 15-5](#), June Special Session (JSS), that subject municipalities to the state set-aside program for small and minority businesses.

SUMMARY

Effective October 1, 2015, [PA 15-5](#), JSS, §§ 58-71, subjects certain state-financed public works contracts awarded by municipalities to state set-aside requirements for small and minority contractors. The act subjects contractors awarded such contracts to, among other things, existing law's nondiscrimination and affirmative action requirements and the Commission on Human Rights and Opportunities' (CHRO) enforcement authority.

The act similarly applies these requirements to projects administered by certain entities receiving state assistance from quasi-public agencies. However,

this report addresses only those provisions affecting municipalities.

SET-ASIDE CONTRACTS (§§ 58 & 59)

The state set-aside program requires state agencies and political subdivisions (other than municipalities, under prior law) to set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE). The act requires contractors awarded "municipal public works contracts" to comply with these requirements if the (1) contract includes

state financial assistance and (2) total contract value exceeds \$50,000. The set-aside amount is based on the value of the state's financial assistance for the contract (i.e., at least 25% of the amount of state assistance must be set aside for small contractors, and at least 6.25% must be reserved for MBEs, respectively).

Beginning October 1, 2015, a municipality that awards a municipal public works contract must state in its notice of solicitation for competitive bids or request for proposals or qualifications that the general or trade contractor must comply with the above set-aside requirements and the law's nondiscrimination and affirmative action requirements (see below). The act specifies that these requirements do not apply to municipalities that have set-aside programs under which the MBE set-aside equals or exceeds 6.25% (currently Bridgeport, Hartford, and New Haven).

A "municipality" is any town, city, borough, consolidated town and city, or consolidated town and borough. A "municipal public works contract" is the portion of an agreement, financed in whole or in part by the state, entered into on or after October 1, 2015 between a municipality and any individual, firm, or corporation for constructing, rehabilitating, converting, extending, demolishing, or repairing a public building or highway, or other changes or improvements in real property. These contracts exclude alliance district projects that are financed with state funding of \$50,000 or less. (Alliance districts are the 30 school districts in the state with the lowest district performance index, which is a weighted measure of student mastery test scores by district.) State funds include matching expenditures, grants, loans, insurance, or guarantees.

SET-ASIDE GOALS (§ 61)

By law, state agencies and political subdivisions other than municipalities must annually notify the Department of Administrative Services (DAS) commissioner of their certified small contractor and MBE set-aside goals for the current fiscal year. The act specifies that municipal public works contracts are not subject to this reporting requirement.

PROGRAM ADMINISTRATION (§ 62)

By law, DAS is responsible for administering the set-aside program for non-municipal public works contracts and state contracts for goods and services. The act (1) makes CHRO responsible for program administration with respect to municipal public works contracts, including providing training sessions, and (2) allows the commission to adopt implementing regulations.

NONDISCRIMINATION REQUIREMENTS (§§ 63 & 64)

Before [PA 15-5](#), JSS, all contractors that entered into contracts (regardless of value) with the state or one of its political subdivisions, other than a municipality, had to file a representation or documentation with the contracting agency indicating that they comply with state anti-discrimination laws. The act extends this requirement to contractors that enter into municipal public works contracts except that it requires these contractors to file the representation or documentation with CHRO rather than the contracting agency. It prohibits municipalities from awarding contracts to contractors that have not provided the representation or documentation.

The act also extends to these contractors requirements that they, among other things, (1) state in their job advertisements that they are "affirmative action-equal opportunity employers," (2) comply with nondiscrimination and affirmative action requirements and orders issued by CHRO, and (3) provide CHRO with access to certain employment practice records. The contractors must also agree and warrant that they will make good faith efforts to employ MBEs as subcontractors and materials suppliers. They must include these provisions in every subcontract entered into to fulfill any obligation of a municipal public works contract.

Under prior law, these requirements did not apply to contracts where each contractor was a political subdivision of the state. The act applies the requirements to contracts between political subdivisions that are (1) municipal public works contracts or (2) quasi-public agency project contracts (i.e., contracts financed in whole or in part by a quasi-public agency using state funds).

AFFIRMATIVE ACTION REQUIREMENTS (§§ 66-68)

Before [PA 15-5](#), JSS, the successful bidder for a public works contract awarded by a state agency or political subdivision, other than a municipality, for more than \$500,000 and paid for in whole or in part with state funds had to file with and obtain CHRO's approval for an affirmative action plan before the contract was awarded. The act extends this requirement to bidders for municipal public works contracts that meet these criteria. It also extends to the municipality a requirement to withhold 2% of the total contract price per month from a contractor that does not have an approved affirmative action plan.

Under existing law, a contractor that is not subject to the above filing requirement still must file an affirmative action plan with CHRO if it (1) has 50 or more employees and (2) is awarded a public works contract by a state agency or political subdivision other than a municipality for more than \$50,000. (The plan does not

need to be filed before the contract is awarded.) The act also extends this requirement to such contractors that enter into municipal public works contracts exceeding the \$50,000 threshold.

MUNICIPAL CONTRACT COMPLIANCE PROGRAMS (§ 70)

The act allows CHRO to permit a municipality to use its own contract compliance program if the commission determines that the municipality's program is at least equivalent to existing law's nondiscrimination and affirmative action requirements. A contractor that enters into a municipal public works contract with such a municipality may be relieved from complying with certain statutory contract compliance requirements as long as it complies with the municipality's program.

ENFORCEMENT (§§ 69 & 71)

The act subjects contractors with a municipal public works contract to CHRO's enforcement authority if they violate the law's nondiscrimination and affirmative action requirements. If after a hearing CHRO finds noncompliance by the contractor with respect to these requirements, it may, among other things, (1) order the municipality to withhold 2% of the total contract price per month from the contractor, (2) prohibit the contractor from entering into further municipal public works contracts for a specified period of time, or (3) refer the matter to the attorney general or appropriate prosecuting authority.

The act similarly prohibits municipalities from entering into a municipal public works contract with any bidder or prospective contractor that does not comply with (1) the law's nondiscrimination and affirmative action requirements or (2) CHRO orders. Under existing law, this prohibition applies to state agencies. The act also allows CHRO to order municipalities to refrain from contracting with non-complying contractors.

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